

REMARKS

In the final Office Action dated May 15, 2007, the Examiner rejected pending claims 2-10, 12-21, 23-32, 34-43 and 46-54 under the judicially-created doctrine of obviousness-type double patenting as unpatentable over one or more claims of U.S. Patent No. 7,128,744 in combination with U.S. Patent No. 6,306,136 to Baccelli. (5/15/07 Office Action at 2.) While applicants previously submitted a Terminal Disclaimer on March 5, 2007 to obviate these rejections, the Examiner has objected to that paper as not executed by a person authorized to act on behalf of the assignee. In response, Applicants submit herewith a new Power of Attorney by Assignee, expressly authorizing the practitioners at customer no. 51832 (Jones Day) "to execute terminal disclaimers on behalf of assignee." Applicants also submit, under separate cover, a new Terminal Disclaimer under 37 CFR 1.321(c), executed by the undersigned (Thomas P. Scully) — a registered practitioner at customer no. 51832. Applicant's response is made only to expedite prosecution of the present application and does not constitute acquiescence in the Examiner's rejection. Applicant submits that the timely-filed Terminal Disclaimer obviates the present rejections and respectfully requests allowance of pending claims 2-10, 12-21, 23-32, 34-43 and 46-54 as presented in applicants' November 7, 2006 Response to Final Office Action Under 37 C.F.R. § 1.116. Claims 8, 9, 19, 20, 30, 31, 41, 42, 44, 51 and 52 are independent.

Information Disclosure Statement

In accordance with the duty of disclosure provisions of 37 C.F.R. §1.56 and MPEP § 2001.06(c), applicants submit herewith a Request For Continued Examination and an Information Disclosure Statement (the "IDS"). The IDS provides additional information concerning a litigation associated with the subject U.S. patent application. Said litigation was previously identified in an Information Disclosure Statement filed on March 5, 2007. The subject application and United States Patent No. 7,128,744 ("the '744 patent") are both continuation applications of U.S. Patent Application Serial No. 09/660,287, which issued as U.S. Patent No. 6,623,486 ("the '486 patent"). Both the '486 patent and the '744 patent have been asserted in a patent infringement litigation captioned Synthes (U.S.A.) v. Smith & Nephew, Inc., Civil Action No. 03-0084, pending in the U.S. District Court for the Eastern District of Pennsylvania.

Applicants note that the IDS includes recently-filed pleadings alleging that inequitable

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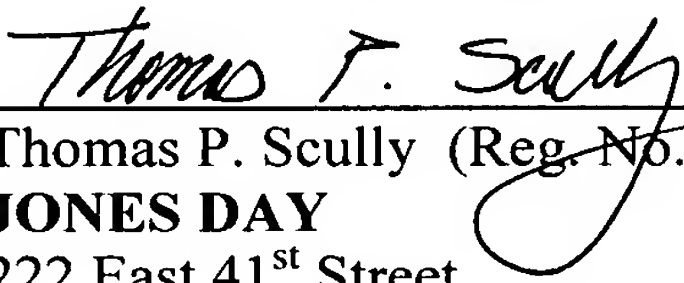
conduct was committed during prosecution of the '486 and '744 patents. Those pleadings and the references allegedly forming the basis for the inequitable conduct allegations have been submitted with the IDS. It is requested that the Examiner make this information of record if it is deemed material to the examination of the application.

Should the Examiner have any questions or concerns regarding the remarks or the above-identified application, the Examiner is invited to call the undersigned attorney at (212) 326-3939 if a telephone call could help resolve any remaining issues.

A separate petition for a one-month extension of time is submitted herewith. Should any fee be required, please charge all such fees to Jones Day Deposit Account No. 50-3013.

Respectfully submitted,

Date: August 30, 2007



Thomas P. Scully (Reg. No. 45,086)
JONES DAY
222 East 41st Street
New York, NY 10017
(212) 326-3939